



UNITED NATIONS

ECLAC

# Economic Commission for Latin America and the Caribbean

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Preliminary document of the regional agreement on  
access to information, public participation and  
access to justice in environmental matters  
in Latin America and the Caribbean

Sustainable Development and Human Settlements Division

5 May 2015

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# Context

## The Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean (Rio de Janeiro, 2012)

Meetings of Focal Points	Approved Documents
First Meeting (Santiago, 2012)	<ul style="list-style-type: none"><li>• Roadmap</li></ul>
Second Meeting (Guadalajara, April 2013)	<ul style="list-style-type: none"><li>• Plan of Action to 2014</li></ul>
Third Meeting (Lima, October 2013)	<ul style="list-style-type: none"><li>• Lima Vision</li><li>• Priority Lines of Action in Matters of Capacity-Building and Cooperation</li></ul>
Fourth Meeting (Santiago, November 2014)	<ul style="list-style-type: none"><li>• Santiago Decision</li><li>• Beginning of negotiation phase</li></ul>



# Meetings of Working Groups (until November 2014)

<b>WG 1</b> Capacity-Building	First Meeting (09.08.13)	Second Meeting (04.10.13)	Third Meeting (29.10.13) IN-PERSON	Fourth Meeting (28.03.14)	Fifth Meeting (30.05.14)	Sixth Meeting (22.08.14)	Seventh Meeting (10-11.09.14) IN-PERSON
Matters Addressed	Priorities and WG calendar, ECLAC diagnostic presentation	Priorities and results of the Trinidad and Tobago workshop	Proposal report for the third meeting of focal points	Definition of tasks for 2014	Capacity-building models in multilateral environmental agreements	Proposal on the contents of the instrument	Discussion on the proposals on the nature and contents of the instrument
Number of Participants	28	27	60	55	49	60	51 (*)
<b>WG 2</b> Access Rights and Regional Instrument	First Meeting (06.08.13)	Second Meeting (08.10.13)	Third Meeting (29.10.13) IN-PERSON	Fourth Meeting (04.04.14)	Fifth Meeting (23.05.14)	Sixth Meeting (01.08.14)	Seventh Meeting (10-11.09.14) IN-PERSON
Matters Addressed	Dialogue towards a regional instrument	Typology of instruments in int. law	Proposal report for the third meeting of focal points	Definition of tasks for 2014	ECLAC's proposal of matters to be considered	Dialogue on international law (nature)	Discussion on the proposals on the nature and contents of the instrument
Number of Participants	31	33	60	57	50	79	51 (*)
							<b>San José Content</b>

(\*) 1,109 connections on web streaming



# Capacity-building workshops

San José, Costa Rica,  
September 2014

Regional Training Workshop  
on Good Practices regarding  
the Implementation of  
Principle 10

Lima, Peru,  
October 2013

Regional Workshop on the  
Implementation of Principle 10 and the  
application of the Bali Guidelines

Santiago, Chile,  
October 2012

ICTs and Sustainable Development in LAC

December 2013

Workshop on Environmental Information

October 2014

Regional workshop on PRTR

Kingston, Jamaica,  
March 2013

Regional Conference on the  
Freedom of Information

Port of Spain, Trinidad  
and Tobago,  
September 2013

Regional Workshop on the  
Implementation of Principle 10

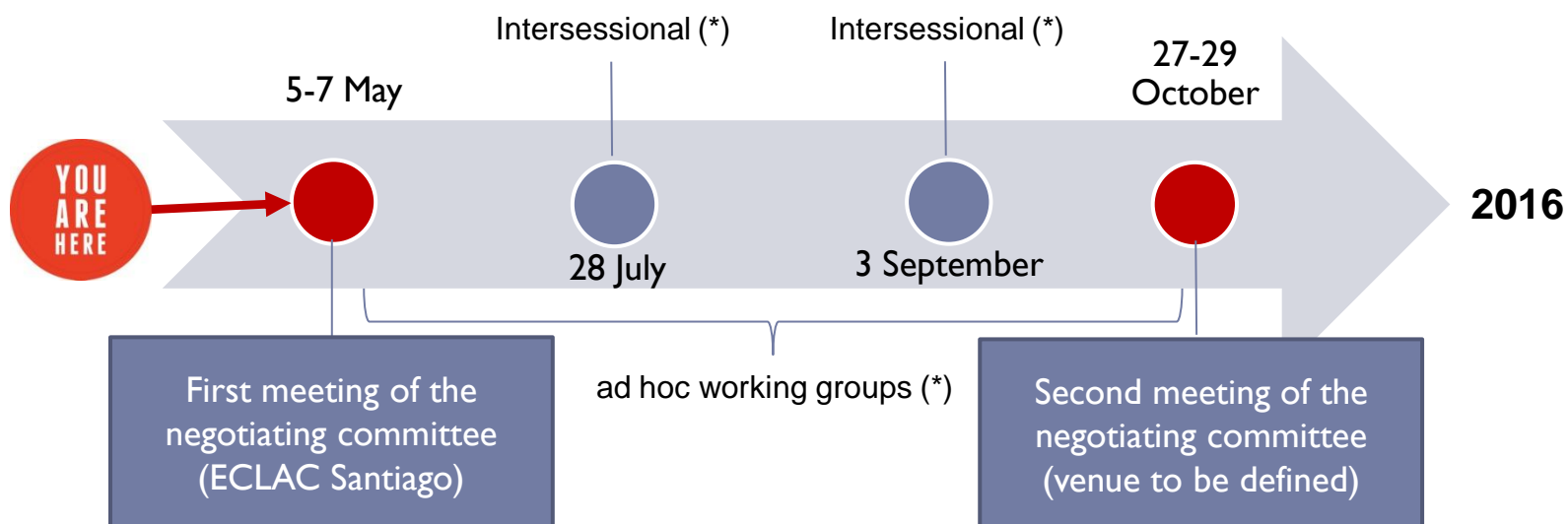
Montevideo, Uruguay,  
June 2014

Seminar on Principle 10 and  
the regional process

# Calendar of the regional process (2015)

## Santiago Decision

- The negotiating committee is created
- The Presiding Officers are appointed
- ECLAC is mandated to prepare the preliminary document and invitation to send input
- The Presiding Officers are mandated to prepare a draft work plan of the negotiating committee
- Public invited to designate representatives



(\*) According to the draft work plan – virtual meeting

# Organization of work

## NEGOTIATING COMMITTEE

Decision-making body

### Presiding Officers

Co-chair:



Vice-chairs:



Coordination of the process

PUBLIC

**ECLAC**  
Technical  
Secretariat



# Preparation of the preliminary document (I)

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## ▶ Mandate

- ▶ Santiago Decision (to be published on 31 March 2015)

## ▶ Sources

- ▶ Input from the Governments and the public
- ▶ Outcomes of the process to date
- ▶ San José Content
- ▶ Regional assessment prepared by ECLAC
- ▶ National laws, practices and institutions of the 33 Latin American and Caribbean countries
- ▶ Consideration was also given to the region's challenges and needs

Group of experts

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# Preparation of the preliminary document (I)

- ▶ Each of the provisions is accompanied **by way of example** of references in order to illustrate how the issues have been addressed in national, regional and international law and practice.
  - ▶ Examples of laws are not exhaustive
  - ▶ References try to ensure an adequate representation of the legal framework of the region
  - ▶ The drafting has followed the international agreement format
  - ▶ Direct and indirect / sectoral references are included
  - ▶ Priority has been given to those sources that specifically refer to environmental matters
  
- ▶ In no particular order of priority and for illustrative purposes only, the sources are cited as follows:
  1. documents from the regional process;
  2. international and regional texts;
  3. national legislation, policies, rulings and resolutions (countries listed alphabetically);
  4. input received from governments and the public and
  5. other relevant sources.



# Structure of the preliminary document

## First part

- Preamble
- Objective (art. 1)
- Definitions (art. 2)
- Principles (art. 3)
- Scope of application (art. 4)

## Operative part

- General obligations (art. 5)

First pillar

Access to environmental information (art. 6 and 7)

Second pillar

Public participation in environmental decision-making (art. 8)

Third pillar

Access to justice (art. 9)

Capacity-building and cooperation (art. 10)

Implementation, monitoring and evaluation

Resources

Rules of procedure

Institutional framework

Final provisions



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# Preamble (I)

MATTER	MAIN SOURCE
References to Rio Declaration, Rio+20 and other documents and developments (paragraphs 1 to 6)	Declaration, Roadmap, San José Content, MEAs, CELAC and input
Right to a healthy environment which is essential for the dignity and full development and the achievement of sustainable development (paragraphs 7 and 8)	Roadmap, Lima Vision, San José Content and input
Rights-based approach, strengthening of democracy and human rights (paragraphs 8, 9 and 10)	Lima Vision, San José Content, human rights instruments and constitutions of Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Jamaica, Saint Vincent and the Grenadines and Trinidad and Tobago and input
Access rights are interrelated and interdependent (paragraphs 11, 12, 13 and 14)	Roadmap, Lima Vision and San José Content
Capacity-building and cooperation is essential and environmental education (paragraphs 15 and 16)	Lima Vision and San José Content
Contribution and fundamental role of the public, social organizations, women, youth, indigenous peoples and other groups and constituencies (paragraph 17)	Lima Vision, San José Content, “The Future We Want” and input

# Preamble (II)

MATTER	MAIN SOURCE
Basic instrument that does not preclude further development (paragraph 18)	Lima Vision and San José Content
Recognition of Latin America and the Caribbean's pluricultural diversity and pluriculturalism (paragraph 19)	Lima Vision, San José Content, legislation of Bolivia, Guatemala and Paraguay and input
Generation of synergies at all levels and recognition of the role of the public (paragraph 20)	Lima Vision, San José Content and input
Creation of a regional agenda in line with national priorities and needs (paragraph 21)	Lima Vision

## **Paraguay: Law n. 4251 on Languages (2010)**

“Artículo 2.- De la pluriculturalidad. El Estado paraguayo deberá salvaguardar su carácter pluricultural y bilingüe, velando por la promoción y el desarrollo de las dos lenguas oficiales y la preservación y promoción de las lenguas y culturas indígenas. El Estado deberá apoyar a los esfuerzos para asegurar el uso de dichas lenguas en todas sus funciones sociales y velará por el respeto a las otras lenguas utilizadas por las diversas comunidades culturales en el país.”

# Objective

“The ultimate objective of the present Agreement is the strengthening of environmental governance and the realization of the right to live in a healthy and sustainable environment through the full application in Latin America and the Caribbean of the access rights enshrined in Principle 10 of the Rio Declaration, under an approach based on cooperation and capacity - building that enables the Parties to improve their laws, policies, institutions and practices to guarantee that those rights are fully observed and implemented.”

**Declaration:**

“[...] Commitments must be made to ensure the full exercise of rights of access to information, participation and justice regarding environmental issues as enshrined in Principle 10 of the Rio Declaration of 1992 [...]”

**Lima Vision:**

“[...] Our vision is that an instrument for Latin America and the Caribbean will contribute to ensuring effective and timely access to environmental information, participation in decisions that affect the environment and access to justice in environmental matters for all. Accordingly, we, the Latin American and Caribbean signatory countries to the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean and its Plan of Action recognize: [...]”

**San José Content:**

“The full implementation of access rights in environmental matters, under a capacity-building and cooperation approach (that is, the contributions of a regional instrument..” as outlined in the Lima Vision).”

+ input

# Definitions (I)

MATTER	MAIN SOURCE
<p><b>Competent authority:</b> “Any public body that, by legal mandate, exercises the powers, authority and functions for the application of access rights”</p>	<p>Law from Panamá (“<i>Autoridad competente o sectorial. Institución pública que, por mandato legal, ejerce los poderes, la autoridad y las funciones especializadas, relacionados con aspectos parciales o componentes del medio ambiental o con el manejo sostenible de los recursos naturales</i>”) and references in legislation of Bolivia, Colombia, Ecuador, Mexico and Peru</p>
<p><b>Access rights:</b> “Rights of access to information, participation and justice in environmental matters, as enshrined in Principle 10 of the 1992 Rio Declaration”</p>	<p>Declaration and input</p>
<p><b>Disadvantaged groups:</b> “Those persons or groups of persons with a greater likelihood of not knowing the risks related to the environment to which they are exposed, or of not fully exercising their access rights, including, among others, women, indigenous peoples, Afrodescendants, older persons, children, youth, persons with disabilities, in situations of vulnerability due to discrimination, poverty, illiteracy, lack of fluency in the official language, health or any other condition”</p>	<p>“Sustainable Development 20 Years from the Earth Summit: developments, gaps and strategic guidelines for Latin America and the Caribbean”, (United Nations 2012), report of the Independent Expert on Human Rights and the Environment (2015) and input</p>

# Definitions (II)

MATTER	MAIN SOURCE
<p><b>Environmental information:</b> Any information in any form on a) the state of the biotic and abiotic elements of the environment; b) factors, such as substances, energy, noise, radiation and waste, including radioactive waste, emissions, spills and other releases into the environment; c) legislation and administrative acts related to environmental matters; d) reports and administrative acts on compliance with environmental legislation; e) economic and social analyses; f) the state of the health and safety of individuals, living conditions, cultural assets; g) acts, resolutions, and decisions on matters related to the environment that are issued by the national judicial and/or administrative bodies; h) any other information on the environment or on elements, components or concepts related thereto.</p>	<p>Legislation of Argentina and Chile</p>
<p><b>Public participation:</b> “Process by which people, individually or collectively, influence decisions on environmental matters through institutionalized ways of participation”</p>	<p>Legislation of Bolivia and Peru (“<i>La participación ciudadana ambiental es el proceso mediante el cual los ciudadanos, en forma individual o colectiva, inciden en la toma de decisiones públicas en materia ambiental, así como en su ejecución y control.</i>”) and ILPES</p>
<p><b>Public:</b> “Any natural o legal person or community organization”</p>	<p>Plan of Action and input</p>
<p><b>Environmental decision-making:</b> Design, implementation, compliance and evaluation of laws, regulations, policies, plans, strategies, programmes, projects —whether public or private— and rules liable to affect the environment or the use, exploitation or conservation of natural resources, at all levels of the internal government structure</p>	<p>San José Content</p>



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# Principles

MATTER	MAIN SOURCE
<b>Equality and non-discrimination</b>	Lima Vision and input
<b>Inclusion</b>	Lima Vision, legislation of Bolivia and input
<b>Transparency and accountability</b>	Lima Vision, legislation of Bolivia, Chile, Colombia, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru and Uruguay and input
<b>Proactivity, co-responsibility and mutual trust</b>	Lima Vision, St. George's Declaration, legislation of Colombia, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Peru, Trinidad and Tobago, Uruguay and Venezuela and input
<b>Collaboration</b>	Lima Vision, legislation of Colombia and input
<b>Progressive realization and non-regression</b>	Lima Vision, legislation of Argentina and input
<b>Good faith and solidarity</b>	Legislation of Argentina, Bolivia, Colombia and Ecuador and input
<b>Prevention</b>	Legislation of Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Peru, Uruguay and Venezuela and input
<b>Precaution</b>	UNFCCC, CBD, Treaty of Chaguaramas, St. George's Declaration, norms of Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Paraguay, Nicaragua, Peru, Trinidad and Tobago, Uruguay and Venezuela and input
<b>Intergenerational equity</b>	Legislation of Argentina, Bolivia, Brazil, Dominican Republic, Guatemala, Guyana, Mexico, and Trinidad and Tobago and input
<b>Traceability</b>	Input

# Scope of application

“Within the limits of the scope of application of the relevant provisions of the present Agreement, all persons shall have the right to obtain access to information, to participate in decision-making and to have access to justice in environmental matters.”

**Declaration:**

“Twenty years after the Earth Summit, we reiterate that, as recognized in Principle 10 of the Rio Declaration, environmental issues are best handled with the participation of all concerned citizens. To this end, each individual should have appropriate access to information, the opportunity to participate in decision-making processes and effective access to judicial and administrative proceedings. [...] Commitments must be made to ensure the full exercise of rights of access to information, participation and justice regarding environmental issues as enshrined in Principle 10 of the Rio Declaration of 1992 [...]”





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# General obligations

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- ▶ Full enjoyment of the right to a healthy environment
  - ▶ Adoption of legislative, regulatory or other measures necessary to guarantee full implementation of the agreement
  - ▶ Duty to assist and provide advice by officials and authorities
  - ▶ Environmental awareness and education
  - ▶ Protection, recognition and support to groups and individuals
  - ▶ Encouragement of the non-Parties to adhere
  - ▶ Cooperation between countries, including cross-border cooperation
  - ▶ Collaboration within each State and coordination with other relevant international agreements
  - ▶ No limitation or repeal of other agreements signed by the parties
  - ▶ Parties can ensure a broader access (a floor, not a ceiling)
  - ▶ Promotion in other international forums
  - ▶ Equality and non-discrimination. Consider women, minorities, indigenous peoples and Afro descendents, children, youth and older persons
  - ▶ Most favourable interpretation for the exercise of the rights
  - ▶ Use of new technologies, open government, social networks and social and telematic media
-

# Measures for application

## **Article 5.2 of the Preliminary Document:**

“Each Party shall adopt the legislative, regulatory or other measures necessary to guarantee full implementation of the provisions of the present Agreement.”

## **San José Content:**

National measures and institutions for implementation of the instrument, including public participation

Scope of application and national measures for the implementation of the instrument

## **San José Content, Aarhus, legislation of Antigua and Barbuda and input**

## **Legislation of Antigua and Barbuda:**

“7.2 [...] the Department shall [...]

(q) Make reasonable and timely efforts to ensure that environmental laws and regulations comply with relevant international treaties and conventions, including any international agreements on the transboundary movement and management of hazardous substances; [...]



# Environmental awareness and education

## **Article 5.4 of the Preliminary Document:**

“Each Party shall promote environmental awareness and education in the public sector and among the public, for the purpose of contributing to the effective application of rights of access to information, participation and justice in environmental matters and providing people with knowledge, capacity and understanding so they can participate in environmental decision-making.”

## **San José Content:**

Awareness-raising and environmental education

Lima Vision, Framework Agreement on the Environment of MERCOSUR, Port of Spain Accord, St. George’s Declaration, legislations of Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela and input

## **Constitution of Brazil:**

*“Art. 225. Todos têm direito ao meio ambiente ecologicamente equilibrado, bem de uso comum do povo e essencial à sadia qualidade de vida, impondo-se ao Poder Público e à coletividade o dever de defendê-lo e preservá-lo para as presentes e futuras gerações.*

*§ 1º - Para assegurar a efetividade desse direito, incumbe ao Poder Público: [...]*

*VI - promover a educação ambiental em todos os níveis de ensino e a conscientização pública para a preservação do meio ambiente; [...]*”

# Recognition of organizations

## **Article 5.5 of the Preliminary Document:**

“Each Party shall create an enabling environment and grant recognition, protection and support to associations, organizations, groups and/or individuals that defend and/or protect the environment and exercise the rights recognized in the present Agreement.

## **San José Content:**

Protection, recognition and support of organizations, groups and/or individuals that aim to protect the environment and that exercise the rights recognized in the instrument

**San José Content, Aarhus, legislations of Bolivia, Chile, Colombia, Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua and Paraguay and input**

## **Legislation of Colombia:**

*“La acción para la protección y recuperación ambientales del país es una tarea conjunta y coordinada entre el Estado, la comunidad, las organizaciones no gubernamentales y el sector privado. El Estado apoyará e incentivará la conformación de organismos no gubernamentales para la protección ambiental y podrá delegar en ellos algunas de sus funciones.”*

## **Legislation of Paraguay:**

*“La SEAM tendrá por funciones, atribuciones y responsabilidades, las siguientes: [...] “concertar y apoyar la acción de asociaciones civiles y organismos no gubernamentales, con las de carácter público nacional, en materias ambientales y afines”*

# Regional cooperation

## **Article 5.7 of the Preliminary Document:**

“The Parties shall increase cooperation, including cross-border cooperation, in order to fully implement rights of access to information, participation and justice, based on the principles of sovereign equality, territorial integrity, solidarity, mutual benefit and good faith.”

## **San José Content:**

Collaboration between the countries in the region

San José Content, Nagoya Protocol, International Watercourses Convention, Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region, Framework Agreement on the Environment of MERCOSUR, Treaty of Chaguaramas, legislation of Argentina, Bolivia, Brazil, Colombia, Honduras, Mexico, Peru and Uruguay, Report of the Independent Expert on human rights and the environment (2015) and input

## **Legislation of Peru:**

*“La política exterior ambiental se regirá por: “La cooperación internacional destinada al manejo sostenible de los recursos naturales y a mantener las condiciones de los ecosistemas y del ambiente a nivel transfronterizo y más allá de las zonas donde el Estado ejerce soberanía y jurisdicción, de conformidad con el derecho internacional. Los recursos naturales transfronterizos se rigen por los tratados sobre la materia o en su defecto por la legislación especial. El Estado promueve la gestión integrada de estos recursos y la realización de alianzas estratégicas en tanto supongan el mejoramiento de las condiciones de sostenibilidad y el respeto de las normas ambientales nacionales.”*

# Most favourable interpretation

## **Article 5.13 of the Preliminary Document:**

“In the implementation of the present Agreement, the Parties shall adopt the most favourable interpretation in order to guarantee the fullest effectiveness of access rights and the protection of the environment.”

**Model Law, legislations of Bolivia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Mexico and Trinidad and Tobago**

### **Legislation of Ecuador:**

*“Las autoridades y jueces competentes deberán aplicar las normas de esta Ley Orgánica de la manera que más favorezca al efectivo ejercicio de los derechos aquí garantizados”*

### **Legislation of Trinidad and Tobago:**

*“The provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.”*

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# Access to information



## ▶ **Passive transparency**

- ▶ **Accessibility of environmental information**
  - All environmental information in possession of, under the control of, or in the custody of competent authorities is public and presumed to be relevant
  - Right to freely request information, without demonstrating special interest
  - Creation and updating of an environmental information system
  - Facilitation of disadvantaged groups
- ▶ **Exceptions regime**
  - Limited, interpreted restrictively and duly justified
  - Circumstances to refuse total or partial access
  - Divisibility of information, tests of public interest and mediation
- ▶ **Conditions applicable to the delivery of information**
  - Format, as quickly as possible (maximum of 30 days)
  - Possibility of extending the deadline
  - Free access. No fees other than the cost of reproducing the information
- ▶ **Independent review mechanisms**
  - Autonomous, independent and impartial entity



# Right to request information

## **Article 6.2 of the Preliminary Document:**

“For effective exercise of the right of access to environmental information, the Parties shall guarantee the following for any person requesting environmental information from competent authorities:

- a) to freely request information without demonstrating or even mentioning a special interest or explaining why the information is being requested;
- (b) to be informed promptly whether the documents that contain the requested information or from which such information can be derived are in the possession or not of the entity, authority or organization receiving the request; and
- (c) to be informed of the right to appeal if information and requirements are not delivered.

## **San José Content:**

Freedom of information: Everyone has the right to access the information held by the bodies under obligation, without prejudice to the exceptions and limitations established by law.

Extent: It is not necessary to demonstrate (or mention) a special interest or provide any reason.

Maximum dissemination: Information should be provided in the broadest possible terms, excluding only that which is subject to constitutional or legal exceptions.

**Model Law, legislations of Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Saint Lucia, Trinidad and Tobago, Uruguay and Venezuela and input**

**Legislation of Saint Vincent and the Grenadines: “Reasons for decisions to be given: [...] where the decision is to the effect that the document does not exist, state that a thorough and diligent search was made to locate the document [...] inform the applicant of his right to apply to court for a review of the decision and the time within which the application for review is required to be made”**



# Environmental information systems (I)

## **Article 6.3 of the Preliminary Document:**

Each Party shall create an environmental information system and keep it up to date, to include, inter alia:

- (a) the texts of international treaties and agreements, as well as laws, regulations and administrative acts on or relating to the environment;
- (b) reports on the state of the environment, referred to in article 7.5;
- (c) the list of public authorities that have information with environmental content and that should be publicly accessible;
- (d) reports on environmental liabilities;
- (e) information on the use, conservation and exploitation of natural resources;
- (f) systematized and updated information on administrative environmental impact assessment files; and
- (g) information on hazardous materials, substances and activities.

The Parties shall guarantee that environmental information systems are duly organized, updated, accessible to all persons and available electronically.

The Conference of the Parties/secretariat may promote the creation and development of standards in relation to environmental information systems. The Conference of the Parties/secretariat may also suggest measures to facilitate the best use of resources.

# Environmental information systems (II)

San José Content, legislation of Antigua and Barbuda, Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela and input

Legislation of Argentina: *“La autoridad de aplicación deberá desarrollar un sistema nacional integrado de información que administre los datos significativos y relevantes del ambiente, y evalúe la información ambiental disponible; asimismo, deberá proyectar y mantener un sistema de toma de datos sobre los parámetros ambientales básicos [...]”*

**Antigua and Barbuda: National Environmental Information Management and Advisory System**

**Bolivia: Sistema Nacional de Información Ambiental**

**Brazil: Sistema nacional de informações sobre o meio ambiente**

**Chile: Sistema Nacional de Información Ambiental**

**Colombia: Sistema Nacional Ambiental / SINA**

**Dominican Republic: Sistema Nacional de Información de Medio Ambiente y Recursos Naturales**

**Guatemala: Sistema Nacional de Información sobre Cambio Climático**

**Honduras: Sistema Nacional de Información Ambiental**

**Mexico: Sistema Nacional de Información Ambiental y de Recursos Naturales y Sistema de Información sobre el Cambio Climático**

**Panama: Sistema de Información Ambiental**

**Paraguay: Sistema Nacional de Información Ambiental**

**Peru: Sistema Nacional de Información Ambiental**

# Disadvantaged groups

## **Article 6.4 of the Preliminary Document:**

“The Parties shall endeavour to facilitate access to information for disadvantaged individuals and/or groups, making alterations — as their specific challenges require— for the presentation of requests, processing and delivery of information, for the purpose of promoting access and participation under equal conditions. Each Party shall guarantee that members of indigenous peoples have the right to receive assistance for preparing their requests in the official language and to receive a prompt response”

## **San José Content:**

Special consideration of specific or vulnerable groups

Legislation of Antigua and Barbuda, Brazil, Chile, Costa Rica, Guatemala, Nicaragua, Paraguay and Saint Lucia and input

Legislation of Antigua and Barbuda: oral requests in case of illiteracy or disability

Legislation of Costa Rica: *“Los miembros de comunidades autóctonas o indígenas tendrán derecho a recibir asistencia de la Defensoría de los Habitantes o de la Comisión Nacional de Asuntos Indígenas para formular sus peticiones en idioma español, y a recibir y obtener pronta respuesta”*

Regulation of Chile: *“En virtud del principio de accesibilidad universal contemplado en la ley N° 20.422, se deberá facilitar el ejercicio del derecho de acceso a la información por parte de las personas con discapacidad, efectuando los ajustes necesarios para la presentación de solicitudes, tramitación del procedimiento y entrega de la información, en función de las carencias específicas de dichas personas, con la finalidad de fomentar el acceso y participación en igualdad de condiciones que el resto de los ciudadanos”*

# Review mechanisms

## **Article 6.19 of the Preliminary Document:**

“The Parties shall have an autonomous, independent and impartial entity or institution to promote transparency in access to environmental information, oversee compliance with rules and guarantee the right of access to information. This entity may have sanctioning powers”

## **San José Content:**

Independent national body / institution to ensure compliance

Legislation of Antigua and Barbuda, Belize, Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Panama, Saint Lucia and Uruguay and input

**Antigua and Barbuda: Information Commissioner**

**Chile: Consejo para la Transparencia**

**Colombia: Ministerio Público**

**Ecuador: Defensoría del Pueblo**

**El Salvador: Instituto de Acceso a la Información Pública**

**Guatemala: Procurador de los Derechos Humanos**

**Honduras: Instituto de Acceso a la Información Pública**

**Jamaica: Appeal Tribunal**

**Mexico: Instituto Federal de Acceso a la Información y Protección de Datos**

**Panama: Autoridad Nacional de Transparencia y Acceso a la Información**

**Uruguay: Unidad de Acceso a la Información Pública**

# Access to information



## ▶ **Active transparency**

- ▶ Generation and dissemination of environmental information
- ▶ Periodic reports on the state of the environment
- ▶ Emergencies and disasters
- ▶ Pollutant Release and Transfer Registers
- ▶ Information on contracts, authorizations and permits
- ▶ Use of information and communication technologies
- ▶ Information of private entities (information for consumers, sustainability reports, among others)
- ▶ Management and archiving

# Generation of information

## **Article 7.1 of the Preliminary Document:**

“The Parties shall endeavour to generate, collect, systematize, make publicly available and disseminate environmental information in a proactive and timely, regular, accessible and comprehensible manner. The Parties shall periodically update this information and encourage the disaggregation and decentralization of environmental information at the subnational and local levels”

## **San José Content:**

Generation and dissemination of environmental information

– Parties shall seek to generate environmental information and make it publicly available in a proactive, timely, regular, accessible and comprehensible manner.

**San José Content, St. George’s Declaration, Port of Spain Accord, legislation of Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Trinidad and Tobago, Uruguay and Venezuela and input**

## **Legislation of Costa Rica:**

*“El Estado propiciará, por medio de sus instituciones, la puesta en práctica de un sistema de información con indicadores ambientales, destinados a medir la evolución y la correlación con los indicadores económicos y sociales para el país.”*

## **Legislation of Ecuador:**

*“Le corresponde al Ministro del ramo [...] Recopilar la información de carácter ambiental, como instrumento de planificación, de educación y control. Esta información será de carácter público y formará parte de la Red Nacional de Información Ambiental, la que tiene por objeto registrar, analizar, calificar, sintetizar y difundir la información ambiental nacional; [...]”*

# Emergencies and disasters

## **Article 7.3 of the Preliminary Document:**

“Each Party shall ensure that in the case of an imminent threat to the health or environment, whether attributable to human activities or due to natural causes, all information that might help the public take measures to prevent or limit potential damage that is in the possession of an obligated entity is disseminated immediately and without delay”

## **San José Content:**

Environmental emergencies: Information shall be effectively and immediately disseminated to communities affected by environmental emergencies.

**Aarhus, Framework Agreement of MERCOSUR on the Environment, Bali Guidelines, legislation of Antigua and Barbuda, Bolivia, Colombia, Ecuador, Haiti, Panama, Peru and Saint Vincent and the Grenadines and input**

## **Legislation of Saint Vincent and the Grenadines:**

“The National Disaster Management Plan shall contain details of arrangements under the coordination of the Director for prevention, preparedness, response and recovery in relation to disasters, including [...]

procedures for informing persons under paragraph (a) and the public in the State and elsewhere of the existence of a disaster alert or a disaster [...].”



# Disadvantaged groups

## **Article 7.4 of the Preliminary Document:**

“In order to facilitate access by disadvantaged groups to information that particularly affects them, the Parties shall ensure that obligated entities disclose environmental information in various languages and prepare alternative formats that are comprehensible for said groups. The Parties shall guarantee access to that information for the various ethnic and cultural groups in the country and in particular shall ensure that suitable channels of communication are arranged to provide access to disadvantaged individuals or groups”

## **San José Content:**

Special consideration of specific or vulnerable groups

– Consider channels that are culturally, economically, spatially and temporally appropriate and used by vulnerable groups.

## **Legislation of Brazil, Chile, Colombia, Guatemala, Mexico, Nicaragua and Paraguay and input**

### **Legislation of Brazil:**

*“[...] adotar as medidas necessárias para garantir a acessibilidade de conteúdo para pessoas com deficiência”*

### **Legislation of Colombia:**

*“Con el objeto de facilitar que las poblaciones específicas accedan a la información que particularmente las afecte, los sujetos obligados, a solicitud de las autoridades de las comunidades, divulgarán la información pública en diversos idiomas y lenguas y elaborarán formatos alternativos comprensibles para dichos grupos. Deberá asegurarse el acceso a esa información a los distintos grupos étnicos y culturales del país y en especial se adecuarán los medios de comunicación para que faciliten el acceso a las personas que se encuentran en situación de discapacidad.”*

# Pollutant Release and Transfer Registers (PRTR)

## **Article 7.7 of the Preliminary Document:**

“Each Party shall create, administer and periodically update a pollutant release and transfer register for the air, water, soil and subsoil, materials and waste in its jurisdiction, among others. The registered information will be public and electronically accessible and will contain disaggregated and standardized data.”

## **San José Content:**

Public pollutant release and transfer registers

Legislation of Chile and Mexico and input. References in Belize and Trinidad and Tobago

## **Legislation of Chile**

*“[...] Administrar un Registro de Emisiones y Transferencias de Contaminantes en el cual se registrará y sistematizará, por fuente o agrupación de fuentes de un mismo establecimiento, la naturaleza, caudal y concentración de emisiones de contaminantes que sean objeto de una norma de emisión, y la naturaleza, volumen y destino de los residuos sólidos generados que señale el reglamento.*

*Igualmente, en los casos y forma que establezca el reglamento, el registro sistematizará y estimará el tipo, caudal y concentración total y por tipo de fuente, de las emisiones que no sean materia de una norma de emisión vigente. Para tal efecto, el Ministerio requerirá de los servicios y organismos estatales que corresponda, información general sobre actividades productivas, materias primas, procesos productivos, tecnología, volúmenes de producción y cualquiera otra disponible y útil a los fines de la estimación. Las emisiones estimadas a que se refiere el presente inciso serán innominadas e indicarán la metodología de modelación utilizada.”*

# Consumers and users

## **Article 7.10 of the Preliminary Document:**

“The Parties shall ensure that consumers and users have information that is verifiable, relevant, precise, non-deceptive and science-based on the environmental qualities and corresponding health effects of goods and services, in order to promote sustainable production and consumption patterns.”

## **San José Content:**

Information for consumers: Product information to ensure consumers make informed choices in environmental matters.

**Legislation of Costa Rica, Colombia, El Salvador, Haiti, Mexico, Peru and Trinidad and Tobago and input**

**Legislation of Colombia: *Sello Ambiental Colombiano***

**Legislation of Mexico:**

*“[...] El establecimiento de sistemas de certificación de procesos, productos y servicios para inducir patrones de consumo que sean compatibles o que preserven, mejoren, conserven o restauren el medio ambiente, debiendo observar, en su caso, las disposiciones aplicables de la Ley Federal sobre Metrología y Normalización [...]”*

**Legislation of Trinidad and Tobago:**

*“[...] the establishment of environmental certification or labelling programmes which allow the Authority to distinguish or designate specific persons, activities or products which the Authority certifies as demonstrating or representing significant environmental management qualities”*

# Information held by private parties and activities of private enterprises

## **Article 7.12 of the Preliminary Document:**

“The Parties shall promote, through legal and/or institutional frameworks, the access to environmental information generated by private entities. The Parties shall also encourage the preparation of sustainability reports on State-owned and private enterprises that contain information on the social and environmental performance of their activities”

## **San José Content:**

Promotion of the production of sustainability reports and environmental compliance by private parties: Compliance with principles, guidelines, human rights and socio-environmental responsibility.

**Legislation of Peru, Lima Workshop Report, “The Future We Want” and input**

## **Article 7.13 of the Preliminary Document:**

“The Parties shall encourage access to adequate and specific information on the effects of companies’ activities on the environment, health and safety, in particular information on dangerous substances or activities“

## **San José Content:**

Information on dangerous materials and activities

**Legislation of Antigua and Barbuda and Brazil and input**

## **Legislation of Brazil:**

*“Para o atendimento do disposto nesta Lei, as autoridades públicas poderão exigir a prestação periódica de qualquer tipo de informação por parte das entidades privadas, mediante sistema específico a ser implementado por todos os órgãos do Sisnama, sobre os impactos ambientais potenciais e efetivos de suas atividades, independentemente da existência ou necessidade de instauração de qualquer processo administrativo.”*

# Structure of the preliminary document

## First part

- Preamble
- Objective (art. 1)
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- Principles (art. 3)
- Scope of application (art. 4)

## Operative part

- General obligations (art. 5)

First pillar

Access to environmental information (art. 6 and 7)

Second pillar

Public participation in environmental decision-making (art. 8)

Third pillar

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Implementation, monitoring and evaluation

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# Participation in decision-making (I)



- ▶ Implement open and inclusive participation mechanisms, including in processes associated with conservation, use and management of natural resources
- ▶ Opportunity to have an impact
- ▶ Access to relevant information
- ▶ Reasonable periods
- ▶ Presentation of observations
- ▶ Autonomy and characteristics of communities
- ▶ Consideration of observations
- ▶ Re-examination or updating
- ▶ Notification of decision / result
- ▶ Guides and guidelines on participation
- ▶ Participation in international forums
- ▶ Formal spaces for consultation



# Participation in decision-making (II)



- ▶ **Special consideration of specific or vulnerable groups**
  - ▶ Efforts to identify communities in vulnerable situations
  - ▶ Consider best media and formats to supply information to vulnerable communities, ensuring respect for cultural characteristics
  - ▶ When individuals or groups belonging to an indigenous people are affected, the Parties shall ensure that the applicable national and international standards on this matter are observed
- ▶ **Additional measures for activities and projects**
  - ▶ Mandatory public participation procedures for all projects and activities subject to environmental assessment in accordance with national law
  - ▶ Efforts to identify the public directly affected and to facilitate their participation
  - ▶ Access to specific information and notification



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# Opportunity to have an impact

## **Article 8.2 of the Preliminary Document:**

“Each Party shall adopt measures to ensure public participation when all options and solutions are still possible and when the public is able to exercise real influence”

## **San José Content:**

Opportunity to have an impact: Participation should be significant and should take place at a time when options are still open.

Possibility of early public participation, to enable the public to provide background information in the early stages of a project's development

**San José Content, legislation of Ecuador, Guatemala, Honduras, Mexico, Panama and Peru and input**

## **Legislation of Peru:**

*“Las entidades públicas señaladas en el artículo 2 procurarán desarrollar sus mecanismos de participación ciudadana y acceso a la información en base a los siguientes lineamientos:*

*[...]*

*b) Asegurar que la participación se realice por lo menos en la etapa previa a la toma de la decisión o ejecución de la medida”.*



# Access to relevant information

## **Article 8.3 of the Preliminary Document:**

“The public shall have access to relevant information for active and effective participation in a timely, comprehensible and objective manner and in a simple and clear format, through suitable means. The information will contain at least the following: the type or nature of the decision, including a non technical summary thereof; the competent authority for making the decision and other authorities involved; and the procedure specified for participation, including the date on which the procedure will begin, the possibilities offered to the public to participate and the date and place of any public consultation or hearing as applicable.

## **San José Content:**

Timely notification, appropriate deadlines and prior information

Relevant information: The public must have access to relevant information for their participation to be active and effective

**St. George’s Declaration, legislation of Antigua and Barbuda, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay and input**

## **Legislation of Colombia:**

*“La audiencia pública ambiental tiene por objeto dar a conocer a las organizaciones sociales, comunidad en general, entidades públicas y privadas la solicitud de licencias, permisos o concesiones ambientales, o la existencia de un proyecto, obra o actividad, los impactos que este pueda generar o genere y las medidas de manejo propuestas o implementadas para prevenir, mitigar, corregir y/o compensar dichos impactos; así como recibir opiniones, informaciones y documentos que aporte la comunidad y demás entidades públicas o privadas”.*

# Autonomy and characteristics of the communities

## **Article 8.6 of the Preliminary Document:**

“The Parties shall ensure that the public is able to participate with full autonomy and that accommodations are made for the social, economic, cultural, geographical and gender characteristics of communities, by implementing differentiated participation processes intended to overcome any barrier. In particular, when groups reside in the involved areas that speak primarily languages other than the official language, the competent authority shall guarantee that the means are provided to facilitate their understanding and participation.”

## **San José Content:**

Autonomy: The public must have complete autonomy to participate and organize.

Appropriate information and logistics channels

Framework Agreement of Mercosur on the Environment, legislation of Bolivia, Brazil, Chile, Colombia, Ecuador, Nicaragua, Peru and input

## **Legislation of Ecuador:**

*“Alcance de la participación social: ...La información a proporcionarse a la comunidad del área de influencia en función de las características socio-culturales deberá responder a criterios tales como: lenguaje sencillo y didáctico, información completa y veraz, en lengua nativa, de ser el caso; y procurará un alto nivel de participación”.*



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# Consideration of observations

## **Article 8.7 of the Preliminary Document:**

“Each Party shall duly take into consideration the outcome of the participation process when making decisions. When the observations or recommendations of the public are not taken into account, the reason should be reported and substantiated in writing to those who made them.”

## **San José Content:**

Consideration of observations received from the public and decision taken

– Extent of public participation and justification of the consideration given to the comments from the public

Legislation of Argentina, Bahamas, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Paraguay, Peru, Saint Vincent and the Grenadines and Uruguay

## **Legislation of Argentina:**

*“Las autoridades deberán institucionalizar procedimientos de consultas o audiencias públicas como instancias obligatorias para la autorización de aquellas actividades que puedan generar efectos negativos y significativos sobre el ambiente.*

*La opinión u objeción de los participantes no será vinculante para las autoridades convocantes; pero en caso de que éstas presenten opinión contraria a los resultados alcanzados en la audiencia o consulta pública deberán fundamentarla y hacerla pública.”*



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# Participation in international forums

## **Article 8.11 of the Preliminary Document:**

“Each Party shall strive to promote effective public participation in international forums and negotiations on environmental matters and/or with an environmental impact.”

## **San José Content:**

Applicability to international forums and negotiations

## **Legislation of Uruguay**

*Legislation of Uruguay: Decreto 25/2014 del Ministerio de Relaciones Exteriores que crea el Sistema de Diálogo y Consulta entre Cancillería y las Organizaciones Sociales de 2014*



# Formal spaces for consultation

## **Article 8.12 of the Preliminary Document:**

“The Parties shall encourage the establishment of permanent formal spaces for consultation on environmental matters in which representatives of various groups and sectors will participate. The Parties shall promote regard for local knowledge, dialogue and interaction of different views and knowledge.”

## **San José Content:**

Impact forums: Establishment of permanent forums with representatives of different sectors (representatives of civil society and public authorities).

Respect for cultural diversity: Respect for the particular conditions and plurality of all, especially vulnerable groups and indigenous peoples, and promotion of the value of local knowledge.

**Legislation of Brazil, Chile, Costa Rica, Guatemala, Jamaica, Mexico, among others**

**Brazil:** *Conselho Nacional do Meio Ambiente*

**Chile:** *Consejos consultivos del Medio Ambiente*

**Costa Rica:** *Consejos Regionales Ambientales*

**Guatemala:** *Consejo Nacional de Cambio Climático*

**Jamaica:** Local forest management committees



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# Indigenous peoples

## **Article 8.14 of the Preliminary Document:**

“When individuals or groups belonging to an indigenous people are affected, the Parties shall ensure that the applicable national and international standards on this matter are observed.”

## **San José Content:**

Respect for cultural diversity: Respect for the particular conditions and plurality of all, especially vulnerable groups and indigenous peoples [...]

**169 ILO Convention, UN Declaration on rights of indigenous peoples, legislation of Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Panama, Peru, Venezuela and input**

## **Legislation of Chile:**

*“Es deber del Estado facilitar la participación ciudadana, permitir el acceso a la información ambiental y promover campañas educativas destinadas a la protección del medio ambiente. Los órganos del Estado, en el ejercicio de sus competencias ambientales y en la aplicación de los instrumentos de gestión ambiental, deberán propender por la adecuada conservación, desarrollo y fortalecimiento de la identidad, idiomas, instituciones y tradiciones sociales y culturales de los pueblos, comunidades y personas indígenas, de conformidad a lo señalado en la ley y en los convenios internacionales ratificados por Chile y que se encuentren vigentes.”*

# Activities and projects (I): Mandatory participation procedures

## **Article 8.15 of the Preliminary Document:**

“The Parties shall guarantee mandatory public participation procedures for all projects and activities subject to environmental assessment in accordance with national law. In all cases, public participation shall be guaranteed in projects and activities related to mining, electricity generation, production activities and certain uses of hazardous substances and treatment and disposal of waste. In addition, public participation shall be ensured in projects and activities relating to coastal development.”

## **San José Content:**

Applicability to the formulation, execution and evaluation of projects, policies, plans, standards, regulations, programmes and strategies in environmental decisions

Applicability to activities that may have significant environmental impacts

**Legislation of Argentina, Belize, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and input**

**Mandatory public participation procedures in environmental assessment of projects in Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago and Uruguay**



# Activities and projects (II): Identification of the public directly affected

## **Article 8.16 of the Preliminary Document:**

“Each Party shall require the competent authorities to make efforts to identify the public directly affected by the project or activity and promote specific actions to facilitate their informed participation in decision-making, including, inter alia, technical and financial assistance.”

## **San José Content:**

Identification of those are directly affected

Technical support for participants and resources for participation

Legislation of Colombia, Costa Rica, Ecuador, Guayana, Peru and input

## **Legislation of Ecuador:**

*“Sujetos de la participación social: Sin perjuicio del derecho colectivo que garantiza a todo habitante la intervención en cualquier procedimiento de participación social, esta se dirigirá prioritariamente a la comunidad dentro del área de influencia directa donde se llevará a cabo la actividad o proyecto que cause impacto ambiental, la misma que será delimitada previamente por la autoridad competente”.*



# Activities and projects (III): Decision taken

## **Article 8.18 of the Preliminary Document:**

“Any public directly affected by a decision in the environmental assessment of projects and activities shall be promptly and specifically informed, and the decision shall be accompanied by the reasons and considerations supporting it. The decisions adopted and the grounds on which they are made will be public”

## **San José Content:**

Decision taken

– Communication of the decision: the public must be promptly informed of the decision taken and the reasons for it must be made public and be accessible

**Aarhus and legislation of Chile, Colombia, Costa Rica, Guyana, Haiti and Mexico**

## **Legislation of Chile:**

*“La resolución que califique favorablemente el Estudio o Declaración de Impacto Ambiental deberá ser notificada al proponente, informada a la Superintendencia del Medio Ambiente, a la comunidad y a todos los organismos que hayan participado del proceso de calificación ambiental. La Superintendencia del Medio Ambiente administrará un registro público de resoluciones de calificación ambiental en el que se identifique el proyecto, su localización geográfica, la fecha de su otorgamiento, el titular, el objetivo del mismo y su estado. Dicho registro deberá mantenerse actualizado en el sitio web de la Superintendencia semestralmente [...]”*

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# Access to justice

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- ▶ Right to access justice (justice and equity)
  - ▶ Appeal mechanisms:
    - ▶ Appeal mechanisms when access to information has been denied
    - ▶ Appeal mechanisms when participation has been denied
    - ▶ Appeal mechanisms to deal with infringement of environmental rules and claims relating to environmental damage and compensation
  - ▶ Guarantees on access to justice
    - ▶ specialized entities
    - ▶ broad active legal standing
    - ▶ measures to facilitate the determination of environmental damage
  - ▶ Environmental defenders
  - ▶ Facilitating access to justice
  - ▶ Disadvantaged groups
  - ▶ Decisions adopted
  - ▶ Capacity-building in access to justice
  - ▶ Environmental legal cooperation
  - ▶ Alternative dispute resolution
-



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# Justice and equity

## **Article 9.1 of the Preliminary Document:**

“Each Party shall guarantee the right to access justice in environmental matters within a reasonable period of time through administrative and/or judicial means, in the framework of a process that grants guarantees of due process based on the principles of legality, effectiveness, publicity and transparency, through clear, fair, appropriate and independent procedures. The Parties shall ensure the right of appeal to a superior administrative and/or judicial body”

## **San José Content:**

Justice and equity: Right to be heard, within a reasonable time, through legal and/or administrative means, in a process that grants guarantees of due process; right to be judged on the basis of the principle of legality; clear, fair, appropriate and independent procedures; right of appeal in respect of superior court rulings; and, where these exist, specialized courts.

San José Content, legislation of Argentina, Brazil, Bolivia, Colombia, Dominican Republic, Ecuador, Jamaica, Mexico, Paraguay, Peru, Trinidad and Tobago and Uruguay and input

## **Constitution of Bolivia:**

*“Toda persona será protegida oportuna y efectivamente por los jueces y tribunales en el ejercicio de sus derechos e intereses legítimos. El Estado garantiza el derecho al debido proceso, a la defensa y a una justicia plural, pronta, oportuna, gratuita, transparente y sin dilaciones.”*

## **Constitution of the Dominican Republic:**

*“ Toda persona, en el ejercicio de sus derechos e intereses legítimos, tiene derecho a obtener la tutela judicial efectiva, con respeto del debido proceso que estará conformado por las garantías mínimas que se establecen a continuación: [...]*

*1) El derecho a una justicia accesible, oportuna y gratuita;*

*2) El derecho a ser oída, dentro de un plazo razonable y por una jurisdicción competente, independiente e imparcial, establecida con anterioridad por la ley; [...]*

*9) Toda sentencia puede ser recurrida de conformidad con la ley [...]*

*10) Las normas del debido proceso se aplicarán a toda clase de actuaciones judiciales y administrativas.”*



# Appeal mechanisms

## **Article 9.2 of the Preliminary Document:**

“Each Party shall ensure, in the framework of its national laws, that any person is entitled to have access to a judicial body or other autonomous, independent and impartial body or administrative procedures to challenge the legality of:

- (a) any decision, action or omission related to the access to environmental information;
- (b) any decision, action or omission, with respect to substance or procedure, related to participation by the public in environmental decision-making; and
- (c) any decision, action or omission by an individual, public authority or private entity that could affect the environment or violate, with respect to substance or procedure, the environmental laws and regulations of the State related to the environment”

## **San José Content:**

Appeal mechanisms when access to information has been denied

Appeal mechanisms when access to participation has been denied

Appeal mechanisms to deal with infringement of the rules and claims relating to environmental damage and compensation

**San José Content, Aarhus, St. George’s Declaration, Bali Guidelines, Model Law, legislation of Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Saint Lucia, Trinidad and Tobago, Uruguay and Venezuela and input**



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# Guarantees in access to justice (I)

## **Article 9.3 of the Preliminary Document:**

“To guarantee this right, the Parties shall establish:

- (a) jurisdictional or non-jurisdictional entities specialized in environmental matters;
- (b) effective, reasonable, fair, open, rapid, transparent, equitable and timely procedures;
- (c) broad active legal standing in defense of the environment, which may include collective actions;
- (d) timely and effective execution mechanisms for decisions;
- (e) timely, adequate and effective mechanisms for redress, including restitution, compensation and other suitable measures, and attention to victims as applicable, and the establishment of funds;
- (f) the possibility of ordering precautionary, interim and oversight measures to safeguard the environment and public health; and
- (g) measures to facilitate the determination of environmental damage, including objective responsibility and reversal of the onus of proof.

The Parties shall encourage, insofar as possible, the establishment of judicial and/or administrative standards of review in cases pertaining to environmental damage, such as the *in dubio pro natura* principle.”

## **San José Content:**

Active legal standing; Victim support; Precautionary, interim and oversight measures to safeguard the environment; Specialized courts/chambers to deal with environmental matters; Execution and remedy mechanisms (for example, funds to repair damage)

**Legislation of Antigua and Barbuda, Argentina, Brazil, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela**

# Guarantees in access to justice (II)

## Specialized entities:

- Argentina: *Unidad Fiscal para la Investigación de Delitos contra el Medio Ambiente*
- Bolivia: *Jurisdicción Agroambiental*
- Brazil: *Ministerio Público Ambiental*
- Colombia: *Procuraduría Delegada para Asuntos Ambientales y Agrarios*
- Chile: *Tribunales Ambientales*
- El Salvador: *Jurisdicción ambiental*
- Paraguay: *Departamento de Bosques y Asuntos Ambientales de la Policía Nacional*
- Trinidad and Tobago: *Environmental Commission*

## Broad active legal standing:

- Antigua and Barbuda: “Any person who is aggrieved by a violation of this Act may, with the leave of the court, institute proceedings in a court [...]”
- Bolivia: “*Cualquier persona a título individual o en representación de una colectividad, está facultada para ejercitar las acciones legales en defensa del derecho al medio ambiente, sin perjuicio de la obligación de las instituciones públicas de actuar de oficio frente a los atentados contra el medio ambiente*”
- Brazil: *ação popular*
- Colombia: *acción popular*
- Trinidad and Tobago: *leave of court in public interest*

## Determination of environmental damage:

- Argentina: “*El que cause el daño ambiental será objetivamente responsable de su restablecimiento al estado anterior a su producción. En caso de que no sea técnicamente factible, la indemnización sustitutiva que determine la justicia ordinaria interviniente, deberá depositarse en el Fondo de Compensación Ambiental que se crea por la presente, el cual será administrado por la autoridad de aplicación, sin perjuicio de otras acciones judiciales que pudieran corresponder*”
- Colombia: “*En materia ambiental, se presume la culpa o el dolo del infractor, lo cual dará lugar a las medidas preventivas. El infractor será sancionado definitivamente si no desvirtúa la presunción de culpa o dolo para lo cual tendrá la carga de la prueba y podrá utilizar todos los medios probatorios legales.*”
- El Salvador: “*La carga de la prueba en el procedimiento ambiental corresponderá al demandado*”

# Environmental defenders

## **Article 9.4 of the Preliminary Document:**

“The Parties shall take adequate measures to prevent any attack, threat, coercion or intimidation that any person or group may suffer while exercising the rights guaranteed by the present Agreement and ensure that these acts, should they occur, are investigated, prosecuted and punished in an independent, rapid and effective manner. Victims will be entitled to protection and damages.”

## **San José Content:**

Environmental and access rights defenders (such as the right to promote and defend, individually or in association with others, environmental protection and access rights; the need for States to take the necessary measures to ensure that this right is properly guaranteed).

**Declaration on human rights defenders, legislation of Bolivia, Brazil, Colombia, Ecuador, Honduras and Mexico, Report of the Independent Expert on human rights and the environment and input**

## **Legislation of México:**

*“La Federación y las Entidades Federativas, en el ámbito de sus respectivas competencias promoverán el reconocimiento público y social de la importante labor de las Personas Defensoras de Derechos Humanos y Periodistas, para la consolidación del Estado Democrático de Derecho, y condenarán, investigarán y sancionarán las agresiones de las que sean objeto.”*



# Disadvantaged groups

## **Article 9.6 of the Preliminary Document:**

“In order to exercise the right of access to justice, the Parties shall give consideration to disadvantaged groups by establishing, inter alia:

- (a) support mechanisms, including free technical and legal assistance;
- (b) channels that are linguistically, culturally, economically, spatially and temporally appropriate; and
- (c) assistance in case of difficulties with reading and writing.

## **San José Content:**

Special consideration of specific or vulnerable groups, including indigenous and Afro-descendent peoples

- Free legal assistance
- Consideration of channels that are culturally, economically, spatially and temporally appropriate and used by vulnerable groups.

**San José Content, legislation of Bolivia, Brazil, Chile, Colombia, Cuba, Dominican Republic, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago and Venezuela and input**

**Colombia:** *amparo de pobreza y fondo para defensa de derechos colectivos*

**Mexico:** “*Los indígenas tienen en todo tiempo el derecho a ser asistidos por intérpretes y defensores que tengan conocimiento de su lengua y cultura.*”

**Trinidad and Tobago:** “*Where a person or group of persons aggrieved or injured by reason of any ground referred to in paragraphs (a) to (o) of subsection (3), is unable to file an application for judicial review under this Act on account of poverty, disability, or socially or economically disadvantaged position, any other person or group of persons acting bona fide can move the Court under this section for relief under this Act*”



# Alternative dispute resolution

## **Article 9.10 of the Preliminary Document:**

“The Parties should encourage the development and use of alternative dispute resolution mechanisms, as applicable and provided that no relinquishment of the right to access to justice is involved.”

## **San José Content:**

Alternative dispute resolution

- Promote the development and use of alternative dispute resolution mechanisms, in appropriate cases, for example hearings, mediation and arbitration
- Alternative and inexpensive methods such as commissions and ombudsmen

**San José Content, Bali Guidelines, legislation of Antigua and Barbuda, Argentina, Brazil, Colombia, Ecuador, Guyana, Mexico, Panama, Paraguay, Peru and Trinidad and Tobago and input**

**Legislation of Antigua and Barbuda: “In performing its functions the Department shall facilitate cooperation among persons and manage the environment in a manner which fosters participation and promotes consensus, including the encouragement and use of appropriate means to avoid or expeditiously resolve disputes through mechanisms for alternative dispute resolution”**

**Legislation of Brazil: *compromisso de ajustamento***

**Legislation of Peru: “*Es deber del Estado fomentar el conocimiento y uso de los medios de resolución y gestión de conflictos ambientales, como el arbitraje, la conciliación, mediación, concertación, mesas de concertación, facilitación, entre otras [...]*”**

# Structure of the preliminary document

## First part

- Preamble
- Objective (art. 1)
- Definitions (art. 2)
- Principles (art. 3)
- Scope of application (art. 4)

## Operative part

- General obligations (art. 5)

First pillar

Access to environmental information (art. 6 and 7)

Second pillar

Public participation in environmental decision-making (art. 8)

Third pillar

Access to justice (art. 9)

**Capacity-building and cooperation (art. 10)**

**Implementation, monitoring and evaluation**

**Resources**

**Rules of procedure**

**Institutional framework**

**Final provisions**



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# Capacity-building and cooperation (I)

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- ▶ Based on national demands and needs, specific regional considerations, flexibility, efficiency and effectiveness, results-based management and consideration of the target audiences.
  - ▶ Objective: to establish a framework for peers to share experiences and carry out activities of common interest, particularly in those Parties that are least developed countries or Caribbean small island developing States
  
  - ▶ Modalities of cooperation:
    - ▶ Discussions, workshops, exchanges of experts, technical assistance, observatories
    - ▶ Development, exchange and implementation of educational materials and programmes
    - ▶ Voluntary codes of conduct, guidelines, best practices and/or standards
    - ▶ Sharing of experiences at all levels
    - ▶ Use of committees, councils and public-private platforms
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## Capacity-building and cooperation (II)

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- ▶ Clearinghouse on access rights
  - ▶ Cooperation between authorities at the national level and education and awareness raising of the public
  - ▶ Cooperation with institutions and organizations at the global regional, subregional and national level
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# Other provisions

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- ▶ Resources
  - ▶ Conference of the Parties
  - ▶ Right to vote
  - ▶ Presiding Officers
  - ▶ Secretariat
  - ▶ Consultative groups or subsidiary bodies
  - ▶ **Implementation, monitoring and evaluation**
  - ▶ Final provisions
    - ▶ Settlement of disputes
    - ▶ Amendments
    - ▶ Signature, ratification, acceptance, approval and accession
    - ▶ Entry into force
    - ▶ Reservations
    - ▶ Termination
    - ▶ Depositary
    - ▶ Authentic texts
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# Implementation, monitoring and evaluation

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- ▶ Conference of the Parties
  - ▶ Consideration of least developed countries or Caribbean small island developing States
  - ▶ Preparation of periodic implementation guidelines and good practices
  - ▶ Facilitation and Follow-up Committee
    - ▶ non-adversarial, non-judicial and of a consultative nature
  - ▶ Peer review mechanism
  - ▶ Evaluation of effectiveness of the Agreement
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